

Nicola Lacey

*American imprisonment in
comparative perspective*

Over the last forty years, a number of Western democracies have significantly increased their use of imprisonment. What explains this phenomenon? The most influential line of reasoning looks to the global economic changes that began in the 1970s: the contraction or collapse of manufacturing industries; the creation of a large sector of people who faced long-term unemployment or were employed in insecure forms of work; and consequent pressure on the welfare state. These changes, it is argued,¹ have eroded the consensus that sustained postwar penal welfarism. A rise in recorded crime across Western countries gradually normalized criminal victimization and the management of the risk and fear of crime. Crime became, for the economically secure, an increasingly politicized issue, generating a “penal populism” that brought in its wake repressive and managerial criminal justice strategies.

This is a powerful argument. However, its focus on structural forces and on general categories such as “late modern society” or “post-Fordism”² directs attention away from variations in the institutional framework through which those forces are mediated in different

countries. This is unfortunate; notwithstanding the wide diffusion of a political discourse of penal populism, there are striking differences in the extent to which that discourse has led to greater severity in penal practice. Not all “late modern” democracies have plumped for a “neoliberal” politics. Countries like Denmark, Germany, and Sweden have managed to sustain relatively moderate, inclusionary criminal justice systems – systems premised on reintegrating offenders into society – throughout the period in which the British and American systems have moved toward ever-greater penal severity. Even then, the differences in the scale and quality of punishment between British and American penal systems are striking, with the United States occupying an unenviable position as the unrivaled leader among advanced economies in the costly business of mass imprisonment.

The baleful distinctiveness of the United States’ incarceration record is epitomized, though not exhausted, by imprisonment rates between four and twelve times higher than those in other political economies at similar levels of development (see Figure 1). The picture becomes even more baffling when we consider variation among U.S. states’ imprisonment rates, which, in the mid-2000s, ranged from less than double those of the most

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Figure 1
Political Economy, Imprisonment, and Homicide

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	Imprisonment Rate (per 100,000)	
	2002 – 2003	2008 – 2009
Neoliberal Countries (Liberal Market Economies)		
United States	701	760
Canada	108*	118
New Zealand	155	196
England and Wales	141	153
Australia	115	129
Conservative-Corporatist Countries (Coordinated or Hybrid Market Economies)		
The Netherlands	100	100
Italy	100	97
Germany	98	90
France	93	96
Social Democracies (Coordinated Market Economies)		
Sweden	73	74
Denmark	58	63
Finland	70	67
Norway	58	70
Oriental-Corporatist (Coordinated Market Economies)		
Japan	53	63

*Denotes data from 2003 – 2004.

Sources: Adapted from Peter A. Hall and David Soskice, “An Introduction to the Varieties of Capitalism,” in *Varieties of Capitalism*, ed. Peter A. Hall and David Soskice (Oxford: Oxford University Press, 2001), 1 – 68; Michael Cavadino and James Dignan, *Penal Systems: A Comparative Approach* (London: Sage, 2006); International Centre for Prison Studies, <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief> (September 2009).

punitive of other advanced economies to rates more than ten times higher. What explains the extraordinary scale and severity of the “harsh justice”³ meted out in the U.S. penal system today?

Comparative and historical research are central to any attempt to answer this question. For their analysis of imprisonment rates, youth-justice arrangements, and privatization policies in twelve countries, criminologists Michael Cavadino and James Dignan developed a fourfold typology of criminal justice systems nested

within different kinds of political economy: neoliberal, conservative-corporatist, oriental-corporatist, and social-democratic.⁴ Cavadino and Dignan show that the social-democratic Nordic countries⁵ have maintained humanity in the quality of punishment and moderation in its scale while some of the neoliberal countries – notably the United States – have been moving in the direction of mass incarceration under ever-harsher conditions. These countries are surpassing the penal severity of not only social-demo-

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cratic countries but also both kinds of corporatist economy.

Understanding why resemblances across types of political economy persist over time; why they produce systematically different patterns of punishment; and whether these differences are likely to survive the increasing internationalization of economic and social relations is crucial to answering the key policy question for the United States today: can the forces that have produced mass imprisonment be countered, and if so, how?

We can begin to examine these questions by drawing on recent political-economic analysis of comparative institutional advantages as well as capacities for strategic coordination inherent in differently ordered systems.⁶ Political-economic forces are mediated by cultural filters and by the economic, political, and social institutions that influence the interests, incentives, and identities of relevant groups of social actors. This institutional mediation of cultural and structural forces produces a state's significant and persistent "varieties of capitalist system," which, notwithstanding globalization, we see across states at similar stages of development. Varieties of capitalism either favor or inhibit penal tolerance and humanity in punishment.

My argument starts with the distinction between liberal and coordinated market economies developed by political scientists Peter Hall and David Soskice.⁷ A coordinated market economy such as Germany or Sweden functions primarily in terms of long-term relationships and stable structures of investment, not least in education and training oriented to company- or sector-specific skills, and incorporates a wide range of social groups and institutions into a highly coordinated governmental structure. In a political-economic system premised on incorporation, and hence on the need to reintegrate

offenders into society and the economy, decision-makers are more likely to opt for an inclusionary criminal justice system and less likely to favor exclusionary stigmatization in punishment. Moreover, the interlocking institutions of these coordinated market economies conduce to an environment of relatively extensive informal social controls, which in turn supports the cultural attitudes that underpin and stabilize a moderated approach to formal punishment.

A liberal market economy (of which the extreme case, for any argument about criminal justice, is the United States) is typically more individualistic in structure, is less interventionist in regulatory stance, and depends far less strongly on the coordinating institutions needed to sustain long-term economic and social relations. In these economies, flexibility and innovation, rather than stability and investment, form the backbone of comparative institutional advantage. It follows that, particularly under conditions of surplus unskilled labor (conditions that liberal market economies are more likely to produce), the costs of a harsh, exclusionary criminal justice system are less than they would be in a coordinated market economy. This variation in production regimes also implies differences in the economic activities in which countries excel and, consequently, involves different constraints on the sway of the market and different degrees of influence for financial capitalism.

Accordingly, in the environment produced by the global economic crisis in the 1970s and the subsequent collapse of Fordism, these long-run institutional dynamics took on a special significance for criminal justice policy in liberal market economies. Confronted with political-economic imperatives that led to ever-increasing disparities of wealth and de facto status distinctions in the liberal

economies, economic dynamics fed into the political and social forces that favor harsh and extensive punishment. By contrast, in countries whose economic arrangements have sustained a consensus-oriented system, where long-term investment in high-skill economic activity was affected relatively little by the demise of Fordism, and where social inequality has remained much less acute, political and penal dynamics are different.

These comparative differences are not just a question of economic organization; indeed, economic differences are themselves reinforced by independently important features of political structure and organization. Certain political systems, too, conduce to – or militate against – support for the economic and social policies that enable governments to pursue inclusionary criminal justice policies. In liberal market economies with majoritarian electoral systems, particularly under conditions of low trust in politicians, low deference to the expertise of criminal justice professionals, and a weakening of the ideological divide between political parties focused on the median voter, the unmediated responsiveness of politics to popular opinion in the adversarial context of a two-party system makes it harder for governments to resist intensifying penal severity. These dynamics become particularly strong when both parties take up a law-and-order agenda and when – as in the United States over the last thirty years – economic inequality and insecurity have fed popular anxiety about crime. This renders penal policy as an especially suitable platform on which politicians from all points of the political spectrum may appeal to median voters.

By contrast, in the proportionally representative (PR) systems of coordinated market economies, where negotiation and consensus are central, and where incorporated groups can have greater

confidence that their interests will be effectively represented in the bargaining process that characterizes coalition politics, the dynamics of penal populism may be easier to resist. Due to the discipline of coalition politics in PR systems, which require that bargains are struck before elections, voters can be more confident about the policy slate for which they are voting⁸ – a striking difference from majoritarian systems, in which a party with a comfortable majority is more or less unconstrained by its own manifesto once elected. The result is that long-standing PR systems⁹ typically produce a significant buffer between a popular demand for punishment and the formation of penal policy.

Finally, both the long-term relationships typical of a coordinated market economy and the negotiated style of politics typical of proportional representation lead to greater redistribution and lower social inequality. In particular, even as economies and cultures are increasingly integrated through global trade and communication, coordinated market economies have been able to maintain their significantly more generous welfare states.¹⁰ In light of the strong comparative evidence that associates generosity of welfare provision with moderation in punishment,¹¹ it has been suggested that, particularly in the wake of the move to “workfare” policies in liberal market countries such as the United States, in which performing work is a condition of receiving aid, the penal system has come to replace the welfare system as the means of governing social marginality.¹²

Factors such as unemployment rates, levels of inequality, and welfare-state structures have been studied fairly extensively by scholars of crime and punishment. The form of the constitution, the nature and status of the professional bureaucracy,¹³ the organization and influ-

ence of the media, and various aspects of legal and political culture and of demographics (notably, the demographics of race and age)¹⁴ have also attracted considerable attention. But the effects of institutional features such as electoral systems, the organization of political parties, and the structure of education and training on the dynamics of inclusion and exclusion, which are known to affect not only crime but punishment rates, have attracted much less attention. Yet the comparative evidence tells us that many European countries have maintained relatively stable imprisonment rates, even during times of rising crime and/or popular anxiety about crime, precisely because of these broader institutions: a political system that insulates policy-making from direct electoral pressure; a strong and independent expert bureaucracy; an education system geared toward long-term investment in skills; and a generous welfare state.

On the surface, the U.S. criminal justice system is much as we might expect of a liberal market economy. Nonetheless, with an imprisonment rate three-and-a-half times higher than that of the next most punitive liberal market economy, New Zealand (see Figure 1), the United States is an extreme case. The contrast between the United States and its neighbor Canada, which has seen a relatively stable imprisonment rate since the 1960s,¹⁵ is especially striking. The checks and balances attendant on Canada's distinctive federal structure; the influence of Francophone culture, particularly in the large province of Quebec; a relatively robust consensus orientation in politics; and a conscious sense of the desirability of differentiating Canadian politics and society from those of the United States appear to have offered Canada substantial protection from mass imprisonment.¹⁶

One approach to understanding American "penal exceptionalism" is to review each of the institutional features of a liberal market system; determine whether the United States presents extreme forms of some or all of these features; and assess whether it does so to an extent consistent with its distinctively costly and punitive criminal justice. Certainly, this approach reveals at least a partial picture. The U.S. majoritarian system is characterized by remarkably weak party discipline, a highly politicized bureaucracy, and constitutional controls oriented to due process rather than to the substance of punishment or criminalization. Moreover, the U.S. economy is marked by low levels of unionization, employment protections, and industry/union/government coordination and investment in training; it experienced an exceptionally catastrophic collapse of Fordist industrial production; and its welfare system is particularly ungenerous when compared with other welfare states. The country has a reputation as a classless society, yet these political-economic factors produce especially high levels of social inequality and polarization, most vividly along lines of race.¹⁷ To this reality we should add the very substantial institutional capacity in the prison and prosecution systems that has built up over the entire course of American history.¹⁸ In view of these features, the American economy's response to the collapse of Fordist production and the financial problems attendant on the oil crisis of the early 1970s has been to roll back the welfare state and move in a "neoliberal" direction, leading to the consolidation of a sizable underclass of those excluded from effective membership in the polity and economy. Compounded by cultural factors such as low levels of social trust and high levels of moralism yet weak structures of informal social control, this distinctive combina-

tion is a recipe for especially high levels of punishment.¹⁹

To this picture, we must add three further features. First and most important is the fraught issue of race. In the wake of high levels of social conflict during and immediately after the civil rights movement, the criminal process has been increasingly invoked as a method of disciplining African Americans; incarceration of young African American men in particular has reached extraordinarily high levels. Intense and widespread punishment has knock-on effects for family and social structure, for political participation, and for community governance.²⁰ It leads to devastating further consequences at every level of civil society and political and economic life.²¹ The widespread practice of felon disenfranchisement inevitably excludes a disproportionate number of African Americans from political participation. Disenfranchisement laws, which tend to take more votes from Democratic than from Republican candidates, played a decisive role in Senate and presidential elections from the 1990s, thus creating a clear incentive for Republican politicians to support extensive criminalization and incarceration, even in a context of diminishing crime rates.²² What is more, demographic changes – particularly white flight to the suburbs in Northern cities, which were to be so decisively affected by the collapse of Fordist production – have led to a decline in the political influence of African American voters.²³

The dangerous cocktail of racial politics and criminal justice politics is undoubtedly one important contributor to mass imprisonment. And while the overrepresentation of both migrants²⁴ and certain ethnic groups, notably young African American men, is a marked phenomenon in the criminal justice systems of many countries (the disproportion in

the United Kingdom, for example, corresponds to that in the United States), the much larger population of African Americans in the United States than of black Britons in the United Kingdom entails a much greater impact on overall prison numbers. In 2006, the incarceration rate for men in the United States was 943 per 100,000; disaggregating by race, this drops to 487 for white males, rising to 1,261 for Hispanic and Latino males and a staggering 3,042 for African American males.²⁵

Second, and interacting with race, is the U.S. government's "war on drugs." Over the last forty years, the increasing criminalization of drug use has had a decisive impact on levels of punishment,²⁶ with a particularly marked impact on young African American men.²⁷ While African Americans were twice as likely as whites to be arrested for a drug offense in 1975, they were four times as likely in 1989. Yet during this period, white high school seniors reported using drugs at a significantly higher rate than African Americans, while drug use as a whole was already on the decline at the inception of the war on drugs. The expectation of electoral payoffs lies at the root of this costly and disastrous policy and points the explanatory finger at features of the U.S. political system.

Third, sentencing reform has been a significant factor in the trend toward mass incarceration in the United States. The collapse of faith in the rehabilitative ideal ushered in a formalized approach to sentencing through a range of determinate sentencing legislation at both federal and state levels. This legislative intervention in the sentencing system has had a tendency to consolidate the politicization of punishment; undermine the autonomy and status of the judiciary; and increase the power of prosecutors.²⁸ Note, however, that the

structure of sentencing legislation varies markedly between jurisdictions in the United States, which may help to explain some regional variation (though identifying the direction of causation here is no easy matter).

Taken together, these factors, it can be argued, are in themselves sufficient explanation for the acute politicization of criminal justice and penal severity in the United States. But the huge penal disparity between the United States and other liberal market economies at similar levels of economic and political development has become markedly greater over the last thirty years. This is a trend we can explain only by unraveling longer-term institutional dynamics and their interaction with the economic and social environments of recent decades. In the earlier part of the twentieth century, American penal practices equated much more closely to those of comparable countries. Until the mid-1970s, the U.S. imprisonment rate was relatively stable, ranging from a low of 119 in 1925 to 153 in 1974, with moderate fluctuations, and breaching the 200-mark in only a single year, 1939.²⁹ In the early 1970s, the U.S. imprisonment rate was about one-and-a-half times higher than that of England and Wales. Today, despite the fact that the English rate has itself almost doubled, the U.S. imprisonment rate is almost five times higher than that of England and Wales. While some explanatory factors (notably, the collapse of Fordism) relate specifically to the more recent period in which those disparities have grown, many of the salient features of the U.S. system, including its relatively high African American and Hispanic population, have a much longer history.

Moreover, even granting the relevance of the argument that the United States is an extreme case of a liberal market economy, the scale of the penal disparities

that have emerged over the last three decades invites a more careful analysis. Sociologists Katherine Beckett and Bruce Western have argued that increasing social inequality in the United States is strongly associated with the general rise in punishment and with imprisonment in particular.³⁰ Yet this explanation begs the question of why these dynamics should have become so extraordinarily marked during this period – and in certain states in particular. In 2001, the imprisonment rate ranged from a high of 1,398 per 100,000 in Louisiana to a low of 288 in Maine, with average rates in the South (1,052) one-and-a-half times those in the Northeast (646), compared with an overall U.S. rate of 688.³¹ The variation also applies to racial patterns of incarceration: the rate of imprisonment for African Americans in the United States in 2006 ranged from highs of 4,710 and 4,416 per 100,000 in, respectively, South Dakota and Wisconsin to “lows” of 851 in Hawaii, 1,065 in Washington, D.C., and 1,579 in Maryland.³² Analogous differences can be seen in patterns of capital punishment: since the re-legalization of the death penalty in 1976, more than 70 percent of all executions have been carried out by Southern states, with Texas alone accounting for more than a third of the executions that took place in the thirty years between 1976 and 2006.³³ How are these striking facts to be explained?

Answering that question is a large task, and I can do no more than point out some promising lines of inquiry suggested by the broad account that I have already sketched. I will focus not on the United States' minimal welfare system, its racial politics, or its staggering (though regionally variable) record of social inequality, but rather on what is perhaps the least obvious distinguishing

feature of the United States: its political system.

The significance of political institutions and structures for criminal justice is beginning to attract some very fruitful analysis. Marie Gottschalk has traced the shifting role of criminal politics in American history, pointing to a gradual accretion of institutional capacity that ultimately bolstered the prison expansion of the late twentieth century, as well as to a political structure that favored a distinctively punitive victims' movement.³⁴ Vanessa Barker's recent study of California, New York, and Washington, D.C., shows how the varying structure and culture of state politics have fed into large regional disparities in patterns of punishment.³⁵ Lisa Miller has illuminated the shaping force of policy-making environments at national, state, and local levels, diagnosing a distortion of political representation at the national and state levels, one that has been of great significance in the upswing in punishment as a result of the increasing federalization of criminal policy.³⁶ For the purpose of this argument, I will focus on two lines of inquiry: the nature of the U.S. party system and the highly decentralized nature of its electoral democracy. In both cases, I shall argue, long-standing features of the U.S. political system have, in the particular social and economic environments since the 1970s, worked to produce historically unprecedented levels of imprisonment.

In the case of the party system, during most of the period that has seen the prison buildup, the conventional wisdom has been that voter affiliation with the two main parties is organized along lines that link rather weakly to stable ideological positions.³⁷ While a weakening of left-right ideological affiliation and an increased emphasis on political leaders is not singular to the U.S. party system,

in other countries this trend has been more recent and less extreme. Voter affiliations (hence the strategies candidates use in seeking election) tend therefore to be defined by the policies and personalities of office-seekers or office-holders. In this context, policies likely to secure independent votes by appealing to median voter interests are a key preoccupation for political leaders – not least in a system characterized by weak party discipline and in which it pays leaders (particularly presidents, who are less constrained than are members of Congress to answer to local constituents) to make a direct appeal to voters they hope to win over. Unfortunately, in part as a result of a uniquely punitive victims' movement,³⁸ criminal justice has often been identified by political leaders as an issue with the ability to draw median voters. The perceived political import of criminal justice has set up, loosely speaking, a "prisoners' dilemma" in which both major political parties risk becoming locked into a costly strategy they dare not abandon because of the electoral advantage, particularly vis-à-vis the median voter, which they fear would accrue to the other party. A key example at the national level is the war on drugs. Indeed, the increased federalization of criminal justice policy,³⁹ a development that facilitated not only the war on drugs but also the development of a uniquely rigid sentencing framework that has made its own contribution to the upward drift in punishment, can be seen as a direct result of the prisoners' dilemma effect at the national level.

The electoral prisoners' dilemma dynamic has an equally important impact in the United States at the state and local levels.⁴⁰ This brings us to the second dimension of the American political system that is relevant to "harsh justice": the radical diffusion of electoral politics.

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The peculiarly decentralized quality of American democracy creates a situation in which the prisoners' dilemma is reproduced through frequent elections at state, county, and municipal levels, significantly increasing its impact. Furthermore, individuals seeking election at the local level have an interest in advocating popular policies, the costs of which do not necessarily fall on the electoral constituency.⁴¹ Increased resort to imprisonment is a key example.

These points are of particular importance in any attempt to explain American penal harshness, in large part because "law and order" in national politics has been, if anything, less salient in the United States than it has been in the United Kingdom, Australia, or New Zealand, with national preoccupations focusing on issues like terrorism, drug policy, and capital punishment rather than on overall issues of prison capacity and extent (a matter which in any case is largely in the hands of individual states). But the dynamics of state-level politics are just the beginning of American political decentralization, and though state politics have undoubtedly been of great consequence for the move to mass imprisonment, the local level of the county or city – far more costly to research, and hence much less fully understood – has almost certainly been of equal or even greater significance.

The weak party discipline and personality-domination that characterize national and state-level politics are probably even more prominent in local politics. Here, actors with key roles in the criminal process (mayors, judges, district attorneys, sheriffs) are often elected, and thus are subject to direct electoral discipline; their election campaigns depend on extensive radio and television advertising focused on individual record or policy commitments rather than on party platforms. Moreover, the practice of

electing officials (county commissioners, school boards, treasurers) reaches deep into institutions at one or more remove from the criminal justice system, yet they are institutions in which playing to voter preferences will likely bring the "governing through crime" agenda into play.⁴²

The impact of such elections on criminal justice policy is demonstrated by empirical research. For example, economist Steven Levitt determined that the electoral cycle across fifty-nine large U.S. cities has a significant impact on police hiring, with increases in the size of the police force "disproportionately concentrated in mayoral and gubernatorial election years," a relationship that held when demographic, socioeconomic, and other factors were controlled for.⁴³ Nor are judges immune from this syndrome. For example, political scientists Gregory Huber and Sanford Gordon found that sentences for selected serious crimes increased the closer the sentencing judge was to a reelection date,⁴⁴ while legal scholar and economist Joanna Shepherd found a strong association between state supreme court judicial decisions and "stereotypical preferences" of voters, according to whether judges faced reelection in a Republican- or Democrat-majority constituency.⁴⁵

Economist Andrew Dyke has demonstrated an equally striking effect of electoral cycles on criminal justice in a study of the impact of district attorney elections on criminal case outcomes in North Carolina.⁴⁶ Defendants faced a higher probability of conviction and a lower probability of having all charges dismissed in an election year, suggesting that in the run-up to an electoral contest, sitting district attorneys are more reluctant to dismiss cases and more concerned to assert their "tough on crime" credentials. At each level, then, the opportunities for

an exacerbation of the prisoners' dilemma dynamic are more extensive in the American system than in other liberal market economies with lower levels of political decentralization, stronger systems of party discipline, and fewer electoral offices of relevance to criminal justice.

Note, finally, one particularly important feature of these American electoral dynamics. Crime ranks among the most important issues identified in national opinion surveys and is seen as an especially salient electoral issue when the economy is performing well.⁴⁷ Local officials like district attorneys and mayors, therefore, stand to gain electorally by promising tougher measures on crime. Yet, crucially, they may not have to fund the costs of such measures themselves or, if they do have to fund them, may not face the full political costs of their economic choices. Mayors, for example, are not responsible for most aspects of a city's economic performance. In fact, even state governors are rarely regarded by voters as notably responsible for the state of the economy; economic management is primarily attributed to the federal level. In this context, tough law-and-order policies are electorally attractive – and politically costless. This is a powerful recipe for a prisoners' dilemma in which political actors – including voters – become locked into policy choices that would be in their best interest (individually and as part of a community) to avoid.

The challenge, then, is to find ways within the liberal market economy institutions of the United States to create analogues of the institutional features that appear to have protected coordinated market systems from, as it were, putting their criminal justice money where their penal populist mouth is. The major structural features of the U.S. system that I

have argued play a key role in producing mass imprisonment are not susceptible to direct policy intervention. But if I am right that, over the last thirty years, features of the political system have had particular importance, this correlation suggests two possible ways forward. One approach would be to increase electoral accountability at the local level, by making the economic and other knock-on costs of electoral platforms in the criminal justice field more transparent to the electorate and more clearly attributable to the decision-making of particular officials, thereby raising the electoral costs of such policies. The second approach would be to insulate the development of penal policy from the dynamics of competition for electoral office – dynamics that otherwise conduce to a reactive and short-term framework for policy development. This separation will be hardest to achieve in states where constitutions provide mechanisms not only for direct citizen involvement in shaping penal policy but also for the entrenchment of the resulting policies. But in some states, and at both local and federal levels, there is surely potential for reallocating aspects of criminal justice decision-making to expert commissions or bodies that would combine expert and stakeholder involvement and that would, like many existing institutions (including courts), be somewhat insulated from direct electoral pressure, while being subject to more indirect forms of democratic accountability. As an outsider to the U.S. system, I make this proposal tentatively. But it is worth noting that such an approach has been advocated by three influential American scholars in their acute analysis of the genesis and impact of the Three Strikes policy in California.⁴⁸

ENDNOTES

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- 29 <http://www.angelfire.com/rnb/y/rates.htm>.
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- 31 <http://www.angelfire.com/rnb/y/rates.htm>. For further information on the state and federal prison populations in that year, see Allen J. Beck, Paige M. Harrison, and Jennifer C. Karberg, "Prison and Jail Inmates at Midyear 2001," *Bureau of Justice Statistics Bulletin* (U.S. Department of Justice, 2002), <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=866>.
- 32 Marc Mauer and Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity* (Washington, D.C.: The Sentencing Project, 2007), 8.
- 33 David Garland, "A Peculiar Institution: Capital Punishment and American Society," paper delivered to the Harvard Criminal Justice Forum, May 2008.
- 34 Gottschalk, *The Prison and the Gallows*.
- 35 Vanessa Barker, *The Politics of Punishment: How the Democratic Process Shapes the Way America Punishes Offenders* (New York: Oxford University Press, 2009).
- 36 Lisa L. Miller, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control* (New York: Oxford University Press, 2008); see also Stuntz, "The Pathological Politics of Criminal Law" and Stuntz, "Unequal Justice."
- 37 Notwithstanding the apparent polarization produced by a hardening of opinion in the conservative wing of the Republican Party, both major parties encompass exceptionally broad – and overlapping – policy orientations.
- 38 Gottschalk, *The Prison and the Gallows*.

- 39 Stuntz, "The Pathological Politics of Criminal Law."
- 40 My argument here is somewhat at odds with Lisa Miller's finding that local politics in Philadelphia evinced a more complex, less straightforwardly punitive analysis of crime than that which pertained to national or state levels. Miller's argument is that the distance of state and national politicians from constituents' concerns, in which both criminal victimization and the deleterious social impact of mass imprisonment register rather strongly, and the influence of prosecutors and other pro-victim lobbies has had a decisive impact on the acceleration of punitiveness at those levels; Miller, *The Perils of Federalism*. This argument is persuasive, and an excellent example of the ways in which both the size and the fragmentation of the U.S. system have affected its penal policy. But the studies I cite below suggest that in the competition for office, law-and-order bidding wars nonetheless feature strongly at the local level.
- 41 David Soskice, "American Exceptionalism and Comparative Political Economy," in *Labor in the Era of Globalization*, ed. Clair Brown, Barry Eichengreen, and Michael Reich (New York: Cambridge University Press, 2009), 51–93; Stuntz, "The Pathological Politics of Criminal Law" and Stuntz, "Unequal Justice."
- 42 Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007).
- 43 Steven D. Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime," *The American Economic Review* 87 (1997): 271.
- 44 Gregory A. Huber and Sanford C. Gordon, "Accountability and Coercion: Is Justice Blind When it Runs for Office?" *American Journal of Political Science* 48 (2004): 247.
- 45 Joanna M. Shepherd, "The Influence of Retention Politics on Judges' Voting," *Journal of Legal Studies* 38 (2009): 169. For a review of the broad implications of electing judges, see Pamela S. Karlan, "Electing Judges, Judging Elections, and the Lessons of *Caperton*," *Harvard Law Review* 124 (2010): 80–103.
- 46 Andrew Dyke, "Electoral Cycles in the Administration of Criminal Justice," *Public Choice* (2007): 133, 417–437.
- 47 Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime," 274.
- 48 Franklin E. Zimring, Gordon Hawkins, and Sam Kamin, *Punishment and Democracy: Three Strikes and You're Out in California* (Oxford: Oxford University Press, 2001), 179ff., 204–209.